UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.70
27 November 1990

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Fifth session

SUMMARY RECORD OF THE 70th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 November 1990, at 10 a.m.

Chairman: Mr. VOYAME

CONTENTS

Organizational and other matters (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.90-13846/2636B

The meeting was called to order at 10.05 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 4) (continued)

1. The CHAIRMAN invited Mr. Sorensen to introduce the proposed guidelines for the designation and work of country rapporteurs and alternates under article 19 of the Convention, which read:

"Guidelines for the designation and work of country rapporteurs and alternates under article 19 of the Convention

Designation

The Committee shall designate in public meeting a rapporteur and an alternate to deal with each report from a State party that is to be considered at the Committee's next session.

If the Committee is not in session, the Chairperson, with the secretariat's assistance, shall proceed to the necessary designations.

If possible, the rapporteur and the alternate shall be able to communicate together without interpretation.

The work-load shall be equally distributed between all the members of the Committee, with the exception of the Chairperson, who may express willingness or otherwise to undertake such tasks.

Functions

Before the meeting at which the delegation of the State party is to appear before the Committee, the rapporteur and the alternate shall meet:

To review the report and annexes;

To determine whether further information is called for;

Jointly to prepare questions for the delegation.

During the meeting:

The rapporteur and the alternate shall:

Question the delegation;

Seek clarifications;

Together with the Chairperson, at the end of the meeting with the delegation:

(a) Extend the customary courtesies;

(b) Inform the delegation that the Committee, on the basis of the report, the questions to and the replies from the delegation, will, in accordance with rule 68 of its rules of procedure, transmit its observations to the State party;

(c) Welcome the delegation, the following day, to receive these observations.

After the meeting and, if necessary, on the evening of the same day, the rapporteur and the alternate shall together prepare a draft report, which shall normally cover the following issues;

(i) Is additional information required?

(ii) If so, what information and when (time-limit)?

(iii) Does the Committee wish in addition to discuss the new information with the delegation in a year's time?

(iv) If not, the Committee will look forward to the next report, in four years' time.

(v) The Committee would welcome in particular, in the next report:

(a) Information concerning:

...

(b) Information relating to measures taken by the State party concerning:

...

(c) Other matters that have arisen.

The Committee shall in public (closed?) meeting consider the report of the rapporteur and the alternate. The report will be submitted in one language, but, because of its brevity, it should be possible for the Committee to consider it on a slow reading with interpretation."

2. Ms. CHANET said that the guidelines met the Committee's need for assistance in organzing the work of the country rapporteurs and the alternate rapporteurs. She nevertheless thought that the document just read out should remain confidential and be reviewed regularly. The secretariat might inform the Committee whether the guidelines followed by other human rights bodies were made public or kept confidential.

3. Although she agreed with the recommendation that the rapporteur and the alternate should be able to communicate together without interpretation, she thought that it might be difficult to implement and that it might also be detrimental to the equal distribution of the work-load among all the members of the Committee.

4. The most important part of the guidelines related to the functions of the rapporteurs. It was not clear exactly how the final discussion of a country report was to be organized and, in particular, what procedure was to be followed if the Committee did not make the general comments on a report provided for in rule 68 of its rules of procedure. Furthermore, the guidelines

did not say who would be responsible for making oral observations to the delegation following the consideration of its report. In her view, it would be preferable for the rapporteur to speak last.

5. It also had to be specified at what point in the meeting the rapporteur should meet with the Chairman and other members of the Committee to discuss the Committee's decision. She was not sure whether the Committee would, in all cases, produce written observations specifying the information it required in an additional report or the information that should be included in a country's next periodic report, but the practice of making written observations in all cases might be very cumbersome.

6. The guidelines also indicated that the rapporteur and the alternate should prepare a draft report after the meeting, but did not provide for consultation with the Committee in preparing that report. The work of the rapporteurs should, however, be tied in with that of the Committee.

7. Mr. SORENSEN, referring to some of the points raised by Ms. Chanet, said that it was the responsibility of the rapporteur and the alternate to inform the delegation that the Committee would transmit its observations to the State party. They would, of course, also be responsible for informing the delegation of any additional information required by the Committee. They would specify whether the country would be required to submit an additional report in one year's time or, if not, indicate what information the country should submit in its next periodic report. The rapporteur and the alternate, who had specialized knowledge of the country in question, would be in the best position to prepare a draft report after the meeting, which the Committee would then be able to discuss the following day, whether or not the delegation was present.

8. Mr. MIKHAILOV said that the guidelines would go a long way towards improving the Committee's methods of work. The first requirement was to improve the work of the rapporteurs and alternates by defining their functions, responsibilities and competence and the suggestions made by Mr. Sorensen in that regard were extremely valuable. The main difficulties arose in connection with the decision the Committee had to adopt at the end of its consideration of a report and the means of ensuring that the decision was objective and well argued. The Committee had to deal not only with legal problems, but also with sensitive political and ethical issues and rigorous methods of work were required in order to guarantee the implementation of the Convention. If the guidelines were to facilitate the Committee's task, they should not refer to details such as the extension of the customary courtesies and expressions of thanks, but should focus on the functions and obligations of the rapporteurs and the way in which the Committee should adopt its decisions.

9. Mr. KHITRIN said he agreed that the Committee's methods of work needed to be improved, but considered that the guidelines proposed by Mr. Sorensen constituted too radical a change. The Committee should focus first on improving the methods of work of rapporteurs and alternates and then deal with other issues as they arose.

10. Ms. CHANET said that the section on designation generally reflected the Committee's established practice. In the paragraph on inter-sessional designations, she suggested that the words "with the secretariat's assistance" should be replaced by the words "together with the secretariat". With regard to the problem of interpretation, it was certainly desirable, but unfortunately unrealistic, for the rapporteur and the alternate always to have a common language. In her view, the last two paragraphs, on interpretation and distribution of the work-load, respectively, were not necessary.

11. Mr. DIPANDA MOUELLE suggested that, for clarity's sake, the guidelines should state that designations in public meetings should be made by the Committee through the Chairman, instead of simply by the Committee.

12. Mr. KHITRIN said that the entire section on designation could be deleted, since the same issues had been discussed at length and agreed on by the Committee at its previous session.

13. As to the work-load, it was already distributed evenly as a general rule and, where one member exceptionally took on more than his share, it was on the basis of mutual agreement.

14. Mr. MIKHAILOV said he agreed with Mr. Khitrin that the section on designation could be deleted. He did not think that it was essential for the rapporteur and the alternate to have a common language, particularly as they were required to write separate reports. Moreover, nothing prevented them from communicating through interpretation if necessary.

15. The CHAIRMAN, disagreeing with the previous two speakers, considered it useful to establish written guidelines on the basis of the ideas discussed at the Committee's previous session.

16. In connection with Mr. Dipanda Mouelle's comments, he stressed that the Chairman announced the Committee's decisions, but did not take them; consequently, there was no need to mention him in the paragraph on designations in public meetings.

17. He endorsed Ms. Chanet's amendment to the paragraph on inter-sessional designations, which helped clarify the meaning of the text.

18. Concerning the problem of interpretation, the Committee generally chose a rapporteur and an alternate who were familiar with the language of the country under consideration. Those persons might have ties with the region in question that would prevent them from adopting an unbiased approached. While it was undoubtedly desirable to designate a rapporteur and alternate who came from a different region than that of the country in question, it was difficult to ensure that persons unfamiliar with the language would fully understand the report and all the annexes. He would welcome the views of the Committee on that question.

19. The paragraph on equal distribution of the work-load reflected established practice and the point it made could be stated as a recommendation instead of a requirement.

20. Mr. DIPANDA MOUELLE, stressing that Committee members were elected in their personal capacity and thus did not represent national interests, said that he saw no reason to doubt their impartiality. Moreover, familiarity with the language of the country under consideration was extremely desirable because it would lead to greater effectiveness, which should be one of the Committee's priority goals.

21. Ms. CHANET suggested designating teams composed of one person who was familiar with the language and legal system in question and who could therefore understand the annexes and ask questions that might not occur to other members and one person who was not as well acquainted with the region and could therefore take a more objective view.

22. Mr. SORENSEN said that, although the Committee had already dealt with the subject of designation at its previous session, it was helpful to put its views in writing.

23. He agreed with Ms. Chanet's amendment to the paragraph on inter-sessional designations, which gave it exactly the meaning he had intended.

24. He stressed that the guidelines recommended, but did not require, that the rapporteur and the alternate should be able to communicate together without interpretation. The main reason for that recommendation was to facilitate the formulation of questions and suggestions to be put to the State party.

25. Mr. MIKHAILOV said that to regulate methods of work would unduly restrict the Committee's room for manoeuvre and thereby paradoxically stand in the way of further improvement. As to the designation of rapporteurs and alternates, the current system seemed to function adequately.

26. Mr. BURNS said that he was wary of regulatory schemes in general because they were restrictive and did not allow for adjustment to new situations, but he would not object to adopting broad guidelines if there was a consensus in that regard.

27. Associating himself with Mr. Dipanda Mouelle's views, he said he did not think that geographical origin should determine the choice of a rapporteur or an alternate. Any special problem which might arise in that connection could easily be dealt with on an ad hoc basis.

28. While he did not advocate strict regulations in respect of language, he stressed the importance of appointing as rapporteur and alternate persons who were able thoroughly to understand and analyse the report submitted to them. Only in that way could the Committee meet its obligations to the State party by asking relevant questions and making useful suggestions.

29. The CHAIRMAN associated himself with Mr. Burns' and Mr. Dipanda Mouelle's views on the Committee members' inherent impartiality and agreed that any special cases could be dealt with on an ad hoc basis. He endorsed Ms. Chanet's idea of a mixed team, but did not think that it had to be reflected in the guidelines.

30. Mr. MIKHAILOV suggested that, in order to reach a consensus, the Committee should adopt a compromise whereby the section on designation would be maintained, but a sentence would be added to indicate that it merely reaffirmed the Committee's previous decisions.

31. Mr. KHITRIN said that he was willing to join the consensus, but urged that the paragraph on equal distribution of the work-load should be deleted.

32. The CHAIRMAN said that there was a consensus that the first two paragraphs of the section on designation should be maintained, while the last two should be deleted. The Committee agreed, however, that the ideas contained in the deleted paragraphs should nevertheless guide it in its daily practice.

The meeting was suspended at 11.30 a.m. and resumed at 11.45 a.m.

33. Ms. CHANET said that she endorsed the proposed guidelines on the functions of the rapporteur and the alternate before the meeting. She nevertheless suggested that they should not prepare questions for the delegation "jointly". A broader range of issues might be covered if each prepared his own questions separately, for subsequent comparison and co-ordination with those of the other.

34. Mr. BURNS said that he also endorsed those guidelines, subject to an amendment such as the one suggested by Ms. Chanet.

35. Mr. SORENSEN said that he accepted Ms. Chanet's suggested amendment.

36. Subject to that amendment, the guidelines on functions before the meeting were approved.

37. Mr. SORENSEN, referring to the proposed guidelines on functions during the meeting with the delegation of the State party, said that because the guidelines related primarily to rapporteurs and alternates, there was no specific mention of the participation of the members of the Committee, but they would, of course, be free, as at present, to ask questions and seek clarifications as they saw fit.

38. Replying to a question by Ms. Chanet, he said that, according to the proposed guidelines, substantive conclusions would be presented to the delegation of the State party the following day.

39. Mr. DIPANDA MOUELLE said he assumed that that was in order to give the rapporteur and alternate time to agree on those conclusions. Perhaps that point should be made explicitly in the text of the guidelines.

40. The CHAIRMAN said he assumed that the members of the Committee would have had every opportunity of making their views known before the rapporteur and alternate drafted the conclusions.

41. Mr. BURNS feared that the effect of the proposed guidelines would be to divide what was at present a relatively summary process into a series of segments that would inevitably prove more time-consuming.

42. Mr. SORENSEN said that, as he saw it, the difference would rather be in the quality and value of the exchange of views. His proposals should make it possible to prepare and agree on a much more informed and substantive body of observations for transmission to the State party concerned. He pointed out that the proposed activities to be carried out with the Chairperson would take place at the end of the meetings with the delegation.

43. The CHAIRMAN asked whether those activities should be the subject of such explicit guidelines. Perhaps the time had come for the secretariat to provide the Committee with some information on the procedures followed in other human rights treaty bodies.

44. Mrs. KLEIN (Representative of the Secretary-General) said that, immediately following the stage of questions and answers and dialogue with the representatives of the State party, the Human Rights Committee went on to the stage of "final observations", during which virtually every member took the floor. The State party's representatives then had an opportunity to reply briefly before the Chairman concluded the consideration of the report.

45. The Committee on Economic, Social and Cultural Rights had opted for a somewhat longer period of reflection before making its balanced assessment; since it did not designate country rapporteurs, the final stage of the procedure, which took place on the following day, was initiated by a person who was designated by the Chairman and was preferably from a different region than that of the country concerned. Other members of the Committee could also take part in preparing conclusions; the representatives of the State party were present and could add their comments, if they wished. The conclusions and observations were summarized in the Committee's report.

46. The Committee on the Elimination of Racial Discrimination had a simpler procedure which resembled that followed by the Committee against Torture and in which country rapporteurs initiated the discussion. There was, however, no "final observations" stage.

47. After an exchange of views in which Mr. BURNS, Mr. SORENSEN and the CHAIRMAN took part, Mr. BRUNI (Secretary of the Committee) drew attention to the general rules governing the holding of regular sessions and to the Committee's decisions concerning the length and dates of sessions during the biennial planning period 1990-1991. It would be difficult to change those arrangements, which had been incorporated in the overall conference planning of the United Nations system.

48. The CHAIRMAN said that, if it so wished and if the budgetary situation so permitted, the Committee would be able, at the appropriate time, to make provision for longer sessions, beginning in 1992.

49. Mr. SORENSEN said that, if the number of States parties to the Convention increased, the Committee's work-load would be heavier, but the budgetary situation should improve accordingly.

50. Mr. MIKHAILOV said that there should be no change in the decision that regular sessions of the Committee should normally last two weeks. The Committee might, however, decide to organize its work in such a way that the rapporteurs and their alternates would have two days at the beginning of the session during which to consult and to prepare their questions.

51. Mr. BURNS, referring to Mr. Mikhailov's comment, said that another reason for extending a session by two days would be not merely to give the rapporteurs and their alternates time to prepare their questions and comments, but also to be able to invite the delegations of States parties back for a further meeting. That would take up additional time. If the new procedure had been introduced at the current session, sufficient time would have been available. The management of the agenda was a matter for the Chairman and the secretariat, who would know how much business the Committee could handle at the next two sessions. In any case, the only way to know whether such a proposed new system worked was to try it out. He could see no obvious problems.

52. The CHAIRMAN said that, in the spring of 1991, the Committee would have an opportunity to request an extension of its sessions for the next two years, if necessary, but the agenda would have to be carefully managed. There seemed to be agreement about what should happen during the afternoon meeting with the delegation of the State party: after the delegation had replied to members' questions, it would be thanked and invited to return the following day.

53. Ms. CHANET asked whether, at the end of the second meeting with the State party, individual members would be able to make comments.

54. Mr. SORENSEN said that he envisaged the following procedure. In the morning, the delegation of the State party would arrive and make an introductory statement lasting approximately 15 minutes. Questions would then be put to it by the rapporteur, his alternate and other members of the Committee, in that order. In the afternoon, the delegation would return and present its replies. The rapporteur and his alternate could then ask for clarification of certain points. When those points had been clarified, the Chairman would thank the delegation, informing it that the Committee would present its conclusions on the following day.

55. Ms. CHANET said that she did not agree that only the rapporteur and his alternate should ask for clarifications at the afternoon meeting. It was essential that other members should also be able to do so, since the rapporteur and his alternate had to base their conclusions on the observations made by the Committee as a whole. The procedure should not be made so rigid as to cause a break in the dialogue.

56. The CHAIRMAN said that, if he understood Mr. Sorensen correctly, the other members of the Committee could ask supplementary questions, but not make comments on the conclusions.

57. Mr. SORENSEN said that, in his opinion, the Committee should follow the same procedure as it had followed so far, except for the Chairman's concluding remarks, which should be postponed until the following day. It was very hard for the Chairman and for the rapporteur and his alternate to make all the necessary observations immediately. That could be done on the following day, the conclusions being forwarded to the State party concerned.

58. The CHAIRMAN said that he fully agreed. The procedure would be the same as that followed so far except that the delegation would be requested to appear again on the following day to hear the conclusions reached by the

rapporteur and his alternate. However, other members should also have the possibility of expressing dissenting opinions if they disagreed with the conclusions.

59. Mr. SORENSEN, referring to the section of his proposed guidelines dealing with what should happen after the two meetings with the delegation of the State party, said that the first four points constituted no departure from the Committee's current practice. Point (v), however, was new. Under it, the Committee would expect the State party to produce certain information in writing. It would mention specific shortcomings, as it had done at the present session when it had recommended that Finland should include a definition of torture in its domestic legislation. In that way, the Committee would indicate the failings which it hoped to see corrected within four years.

60. Referring to the last paragraph of the proposed guidelines, he said that, on the day after the two meetings with the delegation, the Committee would meet to discuss a brief document containing the rapporteur's conclusions, which would be read out slowly. The Committee's general comments on the State party's report would then be transmitted to the State party in accordance with rule 68 of the rules of procedure.

61. Ms. CHANET said that she had some misgivings about written conclusions. The Committee should not exceed the powers conferred upon it by article 19 of the Covenant and by its own rules of procedure. Since the Committee was not a court of law, too much formality was not desirable and nothing should be done that might upset States parties unduly. Great caution was called for. The Committee could be very precise, for example, when requesting further information from States parties, but it should be less so in drawing up conclusions. The arrangements should therefore be made a little more flexible. The presentation of a report in writing to the State party might also lead to other problems, including language problems.

62. Mr. KHITRIN said that he shared Ms. Chanet's misgivings about the presentation of conclusions in writing. It would be enough for the rapporteur to inform the Committee of the conclusions. General comments were useful, but they were not always necessary.

63. Mr. SORENSEN said that, if the Committee really wanted to make progress in the four years between each State party's reports, the chances of doing so would be much better if the areas in which progress was desirable were specified in writing and if the Committee's conclusions were transmitted to States parties and not merely handed to delegations. He had the feeling that, when delegations concluded their meetings with the Committee, that was sometimes the end of the matter. However, if the Committee as such transmitted its conclusions to the State party in a letter, it could be sure that they would be received. In doing so, it would be acting in conformity with article 19 of the Convention and with rule 68 of its rules of procedure.

64. Mr. KHITRIN said that he disagreed with the previous speaker. Rule 68 of the rules of procedure stated that the Committee might make general comments, but general comments, by their very nature, were not specific. The presentation of written conclusions would therefore not be in conformity with rule 68.

65. The CHAIRMAN said that he understood the proposal to be that, after the two meetings with the delegation of the State party, the rapporteur and his alternate would meet to draw up conclusions, as explained in Mr. Sorensen's draft guidelines. There was no problem about that. The difficulties would arise on the following day. First, there was the question whether the conclusions should be in writing or not. If they were in writing, they would not be an official document issued in all four working languages. Secondly, there was the question whether the Committee should hold a public or a closed meeting. He himself favoured a public meeting, since the Committee's work should be made as public as possible and it would be helpful to the State party's delegation to know the opinions of the different members of the Committee. As Ms. Chanet had pointed out, the Committee was not a court of law; consequently, it did not have to arrive at unanimous conclusions. If the discussion showed that the Committee agreed with the rapporteur's conclusions, there was no problem. If there were disagreements, they could be expressed and the Chairman could try to draw a conclusion. The situation would be reflected in the Committee's annual report to the General Assembly. Moreover, Mr. Sorensen's point regarding the distribution of the Committee's conclusions within the State party itself should not really be a matter for the Committee.

66. Mr. DIPANDA MOUELLE said that such an arrangement was quite practical and realistic and that the Committee could well adopt it.

67. Mr. SORENSEN said that the situation as just outlined by the Chairman was what he had intended to propose in his draft guidelines. He personally preferred a public meeting at which the rapporteur would read out his conclusions. He still considered, however, that it would be better to send the conclusions to the State party in writing, as a courtesy measure whereby the Committee notified the State party of the conclusions in advance, before it included them in its annual report to the General Assembly.

68. Ms. CHANET asked whether the State party's delegation would be present during the discussion of the Committee's conclusions. What was the practice in other committees?

69. Mrs. KLEIN (Representative of the Secretary-General) explained that the situation in the Committee on Economic, Social and Cultural Rights was rather different. That Committee met on the following day in the presence of the State party's delegation and supplementary observations were made. Subsequently, members of the Committee could make their final comments. Only afterwards did the Rapporteur, in the annual report, draw up an account of the proceedings.

70. Ms. CHANET said that it was her understanding that the rapporteur and his alternate would arrive with a text, which would be read out. They would make their observations. Then the other members of the Committee would indicate whether or not they were in agreement. But what happened afterwards? The other members might more or less agree with the rapporteur, but they might disagree, and the State party's delegation might make some observations. Who would draw up the ultimate conclusions?

71. The CHAIRMAN replied that members of the Committee would have already expressed their views on the previous day. The rapporteur and his alternate would try to draft a consolidated version of the views expressed by themselves and by other members. If some members disagreed with some of their conclusions, that would be noted.

72. Ms. CHANET said that, unless there was a closed meeting of the Committee before the public meeting, the Committee might have difficulty in discussing the rapporteur's conclusions.

73. The CHAIRMAN said that, as he understood the situation, the procedure would be the same as that which had been adopted so far, except that, on the following day, the rapporteur and his alternate would present the conclusions in a more formal manner. The real discussion, including the statements made by the rapporteur and his alternate, would have taken place on the previous day.

74. In view of the shortage of time, the discussion of the Committee's procedure in considering reports submitted by States parties would be resumed at the following meeting.

The meeting rose at 1.05 p.m.